IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4000 OF 1991

Sahyadri Punarvasan Gaothan
Vikas Sanstha, At Sahadari Nagar,
Post Vakhari, Tal.Pandharpur,
Dist. Solapur. Petitioner

versus

Pandharpur Municipal Council,
Pandharpur, Dist. Solapur and
others. Respondents

Bhavesh Parmar, adv. for petitioner.
S.S.Patwardhan, adv. for respondent no.1.
C.R.Sonawane, adv. for R.2 to 5.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, J.

DATE : 6th December 2004

ORAL JUDGEMENT (PER : S.C.DHARMADHIKARI, J.) :-

1. This writ petition under Article 226 of Constitution of India is at the instance of a Committee constituted by persons displaced by Kanhar Dam in Satara District who have been now resettled in Sahyadri Nagar, near Pandharpur in Solapur District. They have several grievances with regard to proper implementation of resettlement programme.

2. All the inhabitants of Sahyadri Nagar were originally inhabitants of five villages in Satara District namely Chaur, Kaloshi, Pimpri, Ritkavli

and Mohad. The State of Maharashtra constructed a dam across Venna River. As a result of the dam, abovementioned, villages were totally submerged. It is contended that in all 271 families consisting about 900 adults and about 500 minors were displaced due to such submergence. These families are resettled in a village then called Isbavi near Pandharpur in 1983. It is contended that as far as Satara District is concerned, there were similar projects and Collector, Satara compiled information relating to resettlement scheme, benefits proposed to be given to the displaced persons and their rights etc.. A pamphlet was published on 10th July 1981.

3. The present petition is in respect of refusal and/or negligence on the part of respondents 2 to 5 in providing land for cultivation, plot of land for residence and other benefits and amenities. Further, the petitioner seeks relief in respect of taxation by respondent no.1 i.e. Pandharpur Municipal Council. It is contended that Municipal Limits of Pandharpur have been extended by State Government. It is being extended to the areas where members of petitioner were rehabilitated and resettled. By virtue of areas being brought within the municipal limits, there will be further burden on the displaced persons.

In other words, they will be subjected to payment of taxes by Municipal Council. It is this grievance which has been highlighted. The other grievances are also worth noticing.

4. At the outset, the grievances which have been set out in the additional affidavit dated 4th November 2004 disclose sorry state of affairs in matters of rehabilitation and resettlement of Project Affected Persons (hereinafter referred to as "PAPs" for short).

5. It is unfortunate that whenever such projects are undertaken in the name of larger public good, people residing in remote villages are displaced. Not only they get thrown out from the areas where they are residing for decades together but upon shifting, minimum and basic amenities are also not guaranteed to them. It is a common grievance of such people that while residing for decades together, with State assistance and most of the times on their own, they establish schools, play grounds, cremation grounds etc.. Villagers get together and implement, with assistance from Non Governmental Organisations and State, schemes for water supply and other amenities. Every thing is gone the moment the villages are submerged. People are shifted to far off places. In the name of resettlement and rehabilitation virtually

nothing is provided. This is the grievance on most occasions. People get thrown out and displaced physically, mentally and socially. Communities which are residing together for decades have to adjust with totally different living conditions. This has an adverse impact on all sections and stratas of the society but more particularly on women and children. The additional affidavit highlights that after more than 20 years of shifting, the Government has failed to provide basic amenities such as Electricity, Water Supply, Roads, Cremation Ground etc.. It is contended that petitioners individually applied for financial assistance for construction of Toilets. There is no response from the Government till date. The population is approximately of 1500 people and only two Latrine structures with 15 Cabins are available. It is clear that they are totally insufficient. No land has been provided for cattle stand nor any land for pick up shed for MSRTC.. The Government has not provided land for Secondary School, Dispensary or Primary Health Centre, Post Office, Bank etc.. Similarly, no land is provided for Play Ground and Market.

6. It is the grievance of Mr.Parmar, learned advocate appearing for petitioner that Rehabilitation Commissioner makes a visit every

year to the village as required under the Maharashtra Resettlement of Project Displaced Persons Act, 1976 and Maharashtra Resettlement of Project Displaced Persons Act, 1989. However, repeated requests to him to sort out the difficulties and grievances faced by the petitioner, have received no response. No permanent solution is forth coming from the Government.

7. We are distressed and totally dis-satisfied to note these state of affairs. In response to the additional affidavit, copy of which has been duly served, the State Government has not filed any counter-reply. No affidavit is filed in response to this writ petition.

8. Our attention is invited to the decision of Supreme Court interpreting and enshrining mandate of Article 21 of Constitution of India. In AIR-1997-SC-3297 (Samatha Vs. State of Andhra Pradesh and others WITH M/s.Hyderabad Abrasives and Minerals (P) Ltd. Vs. State of Andhra Pradesh and others) the Hon’ble Supreme Court has observed as under :-

> "Justice is an attribute of human conduct. Law, as a social engineering, is to remedy existing imbalances, as a vehicle to establish an egalitarian

social order in a Socialist Secular Bharat Republic. The Upanished says that, "let all be happy and healthy, let all be blessed with happiness and let none be unhappy." Bhagwatgeeta preaches through Yudhishtra that, "I do not long for kingdom, heaven or rebirth, but I wish to allevitate the sufferings of the unfortunate." Prof. Friedlander in his "Introduction of Social Welfare" at page 6 states that social welfare is the organised system of social service and institutions are designed to aid individuals and groups to attain specified standard of life and health and personal and social relationship which permit them to develop their full capacities and to promote their well-being in harmony with the needs of their families and the community. Welfare State is a rubicon between unbridled individualism and communism. All human rights are derived from the dignity of the person and his inherent worth. Fundamental Rights and Directive Principles of the Constitution have fused in them as fundamental human rights as indivisible and inter-dependent. The Constitution has charged the State to provide facilities and opportunities among the people and groups of people to remove social and economic inequality and to improve equality of status. Article 39(b) enjoins the State to direct its policy towards securing distribution of the ownership and control of the material resources of the community as best to subserve the common good. The founding fathers with hind sight, engrafted with prognosis, not only inalienable human rights as part of the Constitution but also charged the State as its policy to remove obstacles, disabilities and inequalities for human development and positive actions to provide opportunities and facilities to develop human dignity and equality of status and of opportunity for social and economic democracy. Economic and social equality is a facet of liberty without which meaningful life would be hollow and mirage.

76. India being an active participant in the successful declaration of the Convention on Right to Development and a party signatory thereto, it is its duty to formulate its policies, legislative or

executive, accord equal attention to the promotion of and to protect the right to social, economic, civil and curtural rights of the people, in particular, the poor, the Dalits and Tribes as enjoined in Art.46 read with Arts. 38, 39 and all other related Articles read with right to life guaranteed by Art.21 of the Constitution of India. By that constant, endeavour and interaction, right to life would become meaningful so as to realise its full potentiality of "person" as inalienable human right and to raise the standard of living, improve excellence and to live with dignity of person and of equal status with social and economic justice, liberty, equality and fraternity, the trinity are pillars to establish the egalitarian social order in Socialist Secular Democratic Bharat Republic.

79. Article 21 of the Constitution reinforces "right to life" - a fundamental right - which is an inalienable human right declared by the Universal Declaration on Human Rights and the sequential Conventions to which India is a signatory. In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress, AIR 1991 SC 101 at 173 in paragraph 223, this Court had held that right to life would include right to continue in permanent employment which is not a bounty of the employer nor can its survival be at the volition or mercy of the employer. Income is the foundation to enjoy many fundamental rights and when work is the source of income, the right to work would become as much a fundamental right. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain application. That will be a mockery of them. In Bandhu Mukti Morcha v. Union of India 91984)3 SCC 161 at 183-84 : (AIR 1984 SC at PP.811-812), this Court had held that right to live with human dignity enshrined in Art.21 derives its life breath from the Directive Principles of State Policy and that opportunities and facilities should be provided to the children to develolp in a healthy manner and in conditions of freedom and dignity. Adequate facilities just and human conditions of work etc. are the minimum requirements which must exist in order to

enable a person to live with human dignity and the State has to take every action. In Subhash Kumar v. State of Bihar, AIR 1991 SC 420, this Court had held that the right to life includes the right to enjoyment of pollution free water and air for full enjoyment of life. In Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180, this Court had held that right to livelihood is an important facet of the right to life. In C.E.S.C. Ltd. v. S.C.Bose (1992) 1 SCC 441 at 462-63 : (1992 AIR SCW 202 at pp. 217-18), para 30, it was held that right to social and economic justice is a fundamental right. Right to health of a worker is a fundamental right. Therefore, right to life enshrined in Art.21 means something more than mere survival of animal existence. The right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment - social, cultural and intellectual - without which life cannot be meaningful, would embrace the protection and preservation of life guaranteed Art.21. Right to health and social justice was held to be fundamental right to workers in Consumer Education and Research Centre v. Union of India (1995) 3 SCC 42 : (1995 AIR SCW 759) and Life Insurance Corporation v. Consumer Education and Research Centre (1995)5 SCC 482 : (1995 AIR SCW 2834). Right to economic equality is held to be fundamental right in Dalmia Cement Bharat Ltd. v. Union of India (1996)4 JT (SC) 555 : (1996 AIR SCW 3652). Right to shelter is held to be a fundamental human right in P.G.Gupta v. State of Gujarat, 1995 Supp (2) SCC 182 : (1995 AIR SCW 1540), M/s.Shantistar Builders v. Narayan Khimlal Totame (1990) 1 SCC 520 : (AIR 1990 SC 630), Chameli Singh v. State of U.P. (1996) 2 SCC 549 : (1996 AIR SCW 542) and Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan (1996) 10 JT (SC) 485 : (1996 AIR SCW 4315). The tribals, therefore, have fundamental right to social and economic empowerment. As a part of right to development to enjoy full freedom, democracy offered to them through the

States regulated power of good Government that the lands in scheduled areas are preserved for social economic empowerment of the tribals."

Right to reputation, Right to privacy and Right to equal opportunities of personal, social and community growth and development is a facet of the right guaranteed by Article 21 of Life and Liberty. The mandate is clear. Right to live has to be made meaningful, purposeful and relevant. It is not as if only the urban population is entitled to basic amenities. It is a misnomer and misconception when we proceed on the basis that people residing in villages do not require toilets, open spaces, markets, burial grounds, roads, electricity and water supply. Even after 57 years of independence, we are unable to provide these basic amenities. The response of State is not at all encouraging. It is unfortunate that absolutely no attention is paid to these aspects when implementing and undertaking public projects. The Courts including the Hon'ble Supreme Court has highlighted the matter of total rehabilitation. In fact, the need of hour is to first habitate and then commence the work. However, neither this nor rehabilitation has been done sincerely and honestly. Funds are allocated but rarely disbursed. If disbursed, there is no account of

actual expenditure. Although expended on paper, at site, nothing is visible. It is time that rehabilitation is done sincerely, honestly and diligently.

9. We have observed this with some pain and anguish. The grievances of petitioner after 21 years are not redressed. Therefore, we direct respondents 2 to 5 to forthwith take cognizance of the grievances set out in the Additional Affidavit dated 4th November 2004. This additional affidavit shall be treated as representation of petitioner. Respondents 2 to 5 are directed to consider the same and take appropriate steps and measures. Such measures and steps be taken as expeditiously as possible. We direct the authorities to make a report to this Court with regard to the steps and measures undertaken by them for redressing the grievances. Such report be filed within a period of three months from today.

10. Mr.Parmar, learned counsel appearing for the petitioner then contended that petitioner has been subjected to payment of taxes by Pandharpur Municipal Council. He submits that the action of demanding taxes is wholly unfair, unjust, unreasonable and violative of the mandate of Articles 14 and 21 of Constitution of India.

Additionally, the demand is wholly illegal. He submits that the State Government while extending the limits of Pandharpur Municipal Council was obliged to issue a notification/proclamation inviting objections from members of petitioner, who have been rehabilitated in the area which was proposed to be brought within municipal limits. Such proclamation having not been issued, the decision to bring the areas within municipal limits as also demanding taxes, is totally unsustainable. He submits that steps were taken in 1978 to bring additional areas within the municipal limits. That notification has been implemented after more than a decade. In the mean while, the petitioner have been rehabilitated in Sahyadri Nagar. Admittedly, such rehabilitation is after 1978. Petitioner has no opportunity to object to inclusion of their areas in the municipal limits. Persons who have been rehabilitated are entitled to object and their wishes and desires need to be considered. If rehabilitation itself is in 1983, then on the basis of notification issued in 1978 areas habitated by the members of petitioner could not have been brought within municipal limits. He submits that objections have to be forwarded within the time limit specified in Maharashtra Municipalities Act. Therefore, the authorities were obliged to issue final

notification/declaration of inclusion of the areas in question within a reasonable time after the objections were forwarded. The gap of 10 years cannot be said to be reasonable and the decision to bring the areas within the municipal limit is, thus, illegal and unconstitutional. In any event, the decision is not binding upon the petitioner as they had no opportunity to raise their objections. Therefore, this Court should interfere and quash and set aside the decision of State Government directing inclusion of Sahyadri Nagar within the limits of Pandharpur Municipal Council.

11. We are unable to uphold this contention. The Legislature while providing for altering the limits of Municipal Council under the Maharashtra Municipalities Act, has not provided for any outer limit or time frame for issuance of final notification. Once there is no such provision, then it is not possible to uphold the plea that delay in altering the limits in the instant case is fatal. The notification/ declaration cannot be quashed on this ground. Further, it is not possible to accept the plea that resettled families came to know of the proposals of altering the limits of Pandharpur Municipal Council in June 1987, and, therefore, their representation addressed to the Government should

have been accepted even though it was beyond the time limit prescribed. Merely because a notification dated 1st May 1987 was issued by which the area of Isbavi Gaothan, where displaced families were resettled, was made a separate village, it does not mean that petitioner were entitled to raise objections. We cannot uphold a contention that the State was duty bound to consider the representation even after time limit prescribed for making the same having expired. More so, in the absence of express provision in the statute. Therefore, we do not find that the notification dated 3rd September 1987 extending municipal limits as per proclamation dated 17th October 1978 is bad in law and liable to be set aside.

12. Mr.Parmar’s submissions overlook the nature of power conferred by a statute such as Maharashtra Municipalities Act. The Supreme Court in the case of Sundarjas Kanyalal Bhathijha v. Collector, Thane reported in AIR-1990-SC-261 has held as under :-

> "23. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the Government in establishing a Corporation under the Act is neither

> executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. In the present case the Government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgement over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for their".
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> 24. Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties who are not entitled to be heard under law."

13. In the light of the law laid down in the aforesaid decision, the submission of Mr.Parmar must fail. We are, therefore, unable to accept the contention that petitioner cannot be called upon to pay the taxes by respondent no.1. Equally, there is no force in the contention that in the absence of amenities, members of petitioner cannot be called upon to pay taxes by

respondent no.1. The area being within municipal limits, provisions of Maharashtra Municipalities Act including power of taxation are wholly applicable.

14. Before parting, we must record the statement made by Mr.Patwardhan appearing for respondent no.1 that considering the plight of resettled families, respondent no.1 would allow payment of taxes by reasonable instalments in case representation or request is made in that behalf by petitioner. We hope and expect that respondent no.1 will consider sympathetically the request of petitioner and grant reasonable instalments for payment of taxes. We also hope that respondent no.1 would not resort to coercive measures for recovering taxes straight away considering the peculiar facts and circumstances of present case.

15. We are of the opinion that respondent no.1 along with other respondents is equally bound to provide basic amenities to the rehabilitated families in Sahyadri Nagar. They are bound to perform their obligatory as well as discretionary duties as a Local Self Government. The provisions of Part IXA as well as Schedule 12 of Constitution of India oblige Municipalities to provide basic amenities as well as such other

facilities as would make the areas self sufficient. Therefore, respondent no.1 shall also make a report with regard to the steps and measures undertaken by them for providing amenities set out in the further affidavit dated 4th November 2004. Such report enumerating the steps taken to meet the grievances of petitioner shall be submitted by respondent no.1 as well within a period of three months from today. With the aforesaid directions, the writ petition stands disposed of. In the circumstances, there will be no order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)